

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Civil Writ Petition No.1946 of 2015
Decided on : 11.07.2017**

Randhir Singh

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr. Sandeep Kumar, Advocate for
Mr. Vikram Singh, Advocate for the petitioner.

Ms. Shruti Jain Goyal, AAG, Haryana.

G.S. Sandhawalia, J. (Oral)

The petitioner challenges the portion mentioned in Clause- 7 (v) of the promotion order dated 23/25.08.2011 (Annexure P-2), whereby he has been denied the arrears of pay on account of the promotion given to him, whereby only notional benefits of pay fixation was to be allowed.

The case of the petitioner is that he was appointed as a Constable on 31.11.1972 and was promoted to the post of Head Constable on 21.12.1978 and worked on the said post to the satisfaction of his seniors and was promoted to the post of ASI on 11.01.1989. Thereafter, he was promoted to post of Sub-Inspector on 09.01.2000 and to the post of Inspector on 27.01.2001. His junior, namely, Raghbir Singh was promoted to the post of Deputy Superintendent of Police and it has been averred that no complaint pending against him. Resultantly, he filed representation dated 18.01.2008 with the respondent No.2 with regard to his promotion.

It is further his case that he had filed ***CWP No.3800 of 2009***, in

which it has been mentioned that he had been proceeded against departmental inquiry and there was a stoppage of one increment with permanent effect. Resultantly, he had withdrawn the writ petition and filed an appeal challenging the order imposing the punishment order dated 31.01.2009 passed by respondent No.2. It is his case that his appeal was accepted vide order dated 15.03.2011 (Annexure P-1) by the State Government. Resultantly, he had served a legal notice dated 06.05.2011 for grant of promotion and, thereafter, the impugned order was passed, whereby he has been denied the monetary benefits as such. The legal notice dated 18.12.2014 (Annexure P-3) had been served for the grant of said benefit and on account of non grant, he had filed the present writ petition.

It is not disputed that the petitioner has also retired on 31.05.2009.

Counsel for the petitioner has argued that once the punishment itself had been set aside, he was, therefore, entitled to all the financial benefits from the date his junior was promoted on 29.08.2008, since he had 9 months of service left at that point of time and the punishment order was only passed subsequently on 31.03.2009, which has now been set aside and no longer subsists. He, accordingly, placed reliance upon a Division Bench judgment in '*Ram Singh Vs. State of Haryana*' 2003 (3) SCT 148.

Counsel for the State on the other hand has tried to justify the said action on the ground that the petitioner had retired in the year

2009 and had taken all the retiral benefits on 05.01.2012 (Annexure R-2) and, therefore, at this belated stage, he could not ask for benefits as such.

The fact remains that the petitioner had been denied the benefit of promotion only on account of the pendency of the departmental proceedings at that point of time when his junior was promoted on 29.08.2008. It is the case of the State that a show cause notice was issued to the petitioner on 11.12.2008 and he had submitted his reply on 14.12.2008 and, thereafter, the punishment order had been passed on 31.03.2009. Once the appeal had been accepted vide order dated 15.03.2011 (Annexure P-1), the punishment order ceased to exist for all practical purposes and it evaporated and the petitioner as such cannot be denied the benefits. The interest element can however be denied to the petitioner on this account.

The State counsel very fairly brought to the notice of this Court the Division Bench judgment of this Court passed in '**Satyavir Singh Shekhawat Vs. State of Haryana and others**' 2014 (4) SCT 233, whereby the judgment of the Apex Court in '**Union of India Vs. K.V. Jankiraman (1991) 4 SCC 109**' was taken into consideration. The Division Bench was also dealing with an appeal, wherein on account of principle of 'no work no pay', the relief had been denied by the Learned Single Judge. The Division Bench found that once the enquiries have resulted in exoneration, the consequence would be as if there was no charge against the employee, who would be entitled for grant of financial benefits and he could not be denied the antedated promotion with actual

arrears of pay and grant of notional promotion invoking the principle of 'no work no pay', while relying on the abovesaid judgment of the Apex Court. The relevant portion reads as under:-

“5. Obviously, the appellant is not satisfied with the aforesaid outcome as according to him dropping of charges would mean that he is exonerated since it has resulted in 'no penalty' in the absence of any findings on those charges. It is thus the case of the appellant that once the enquiries have resulted in exoneration, the consequence would be as if there was no charge against the appellant and the appellant would be entitled for grant of financial benefits from the date he is promoted to the aforesaid post. Various judgments are cited by the learned counsel for the appellant in support of the submission that when the enquiry has resulted in exoneration, the delinquent employee could not be denied the benefit of antedated promotion with actual arrears of pay and grant of notional promotion invoking the principle of 'no work no pay' is not the right course of action.

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*17. The principle which can be deduced is that if a promotion is denied to an employee because of the mistake of the administration and due to no fault of the said employee, then the authorities are bound to pay the arrears of salary etc. upon giving him the benefit of retrospective promotion after realising that mistake. This principle would be extended even to those cases where due to sheer negligence, carelessness or on account of malafides an employer denies the benefit of promotion to the employee at a proper time when it becomes due and gives him afterwards though retrospectively. (Also see **State of Kerala and Others v. E.K. Bhaskaran Pillai**, 2007(2) S.C.T. 757 : JT 2007 (6) SC 83; **Mohd. Ahmed v. Nizam Sugar Factory and Others** - (2004) 11 SCC 210; **Nalini Kant Sinha v. State of Bihar***

and Others - 1993 Supp (4) SCC 748. On the other hand, where there is genuine dispute and the promotion was delayed because of pendency of such a dispute and before the settlement of the dispute the promotion could not have been granted, the salary for the past period can be denied even when promotion is given retrospectively after the resolution of the dispute. Further the benefit of arrears of salary for past period can also be denied if it is found that it was not fault or mistake of the administration because of which the promotion was delayed.

18. In those cases where concerned employees seniors as well as juniors are granted the benefit of promotion and the salary for the period in question, same should invariably be given to such an employee who is given belated promotion retrospectively as non grant of arrears of pay and allowances of the higher post for the relevant period, in such circumstances, would amount to hostile discrimination.

19. Keeping in view the principles we have formulated above which are culled out above from the catena of judgments, we have to find the outcome to the present case. The facts of the case have already been noticed above. It is clear there from that the appellant was not promoted earlier, when his juniors were promoted because of the departmental enquiries pending against him. No doubt, these enquiry proceedings have been dropped on the ground of delay. We were shown the original record containing this decision. The reason given is that there is a 14 years delay in conducting the enquiry which would act to the prejudice of the appellant if the inquiries continue. Once that fact is accepted by the Department itself and on that basis the enquiries were dropped, the net effect thereof would be that the appellant was exonerated of the charges. As no penalty has emanated from these charge-sheets, it is for this reason the respondents have themselves given him the promotion from back date. In

such circumstances, denial of actual salary and grant of only deemed promotion on the principle of 'no work no pay' may not be appropriate. Admittedly, the juniors who were granted the benefit of promotion received the salary and if the appellant is deprived thereof, it would amount to hostile discrimination qua him. We are, therefore, of the opinion that the principle of 'no work no pay' cannot be made applicable in the instant case and the appellant would be entitled to salary."

Keeping in view the settled principle the present writ petition is allowed and sub-Clause 7 (v) of the order dated 23.08.2011 (Annexure P-2) is quashed. The petitioner shall accordingly be entitled for all the monetary benefits also. The same be calculated and be paid to the petitioner within a period of 2 months from the receipt of the certified copy of this order. In case the same is not given, the respondent shall also be liable to pay the interest @ 8% per annum from the date the denial was made to the petitioner.

The present writ petition is, accordingly, allowed.

JULY 11, 2017
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No